

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6778

BILL NUMBER: HB 1295

NOTE PREPARED: Dec 31, 2010

BILL AMENDED:

SUBJECT: Public Works Bidding Procedures.

FIRST AUTHOR: Rep. Messmer

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: ☒ **GENERAL**
☒ **DEDICATED**
FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions.

Public Works Contracts of State and Local Units: The bill provides that specifications for public works projects must be written to encourage free, open, and competitive bidding and must refrain from calling for unique or proprietary materials.

Bid Preparation: It provides that a person who prepared, participated in the preparation of, or conferred any property on another person who prepared or participated in the preparation of the specifications for a public works project may not be awarded a contract for the public works project.

Prebid Meetings: The bill provides that if the attendance of a bidder at a prebid meeting or conference is a condition to the acceptance of a bid from that bidder, the date and time of the prebid meeting or conference must be published in the same fashion and for the same period as the board must advertise the date for receiving bids.

Noncollusion Affidavit: The bill provides that the noncollusion affidavit submitted with a public works bid must be affirmed under the penalties for perjury and must affirm that the bidder did not violate the requirements for public works specifications.

Accepting Property: It provides that a person who has certain responsibilities relating to the award of a public works contract and who recklessly, knowingly, or intentionally solicits, accepts, or agrees to accept any property from another person in return for an agreement to: (1) purchase or recommend the purchase of the other person's supplies, materials, or services with respect to the public works project; (2) incorporate or

recommend incorporation of the other person's supplies, materials, or services into specifications for the public works project; (3) award or recommend the award of the public works contract to that other person; or (4) recommend, promote, or endorse that person's supplies, materials, or services with respect to the public works project; commits a Class D felony.

Offering Property: It provides that a person who recklessly, knowingly, or intentionally offers, gives, or agrees to give any property to a contract officer in return for doing any of these acts commits a Class D felony.

Accepting Property Not to Bid: It also provides that a person who recklessly, knowingly, or intentionally solicits, accepts, or agrees to accept any property in return for an agreement not to bid or compete on a public works project or to participate in an arrangement to suppress or eliminate full and unrestricted competition for the award of a public works contract commits a Class D felony.

Repeals and Technical Changes: The bill repeals a superseded statute and it makes other technical changes.

Effective Date: July 1, 2011.

Explanation of State Expenditures: The bill has indeterminate fiscal impact on public works contracting. To the extent that more bidders may be involved in the bidding process as a result of the requirements of the bill, contracts may be more competitive, and therefore, lower cost. However, to the extent that a person who helped with the specifications cannot bid on the project and that specifications cannot be written for materials that can be provided by fewer than three (or in some cases two) bidders, planning costs may increase or expertise or quality may be reduced. Also, the bill could increase costs and revenues to the state and local units for the three Class D felonies established under the bill.

Class D Felony: A Class D felony is punishable by a prison term ranging from six months to three years or reduction to Class A misdemeanor, depending upon mitigating and aggravating circumstances. The average expenditure to house an adult offender was \$19,307 in FY 2010. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the marginal cost for medical care, food, and clothing is approximately \$4,818 annually, or \$13.20 daily, per prisoner. The estimated average cost of housing a juvenile in a state juvenile facility was \$68,260 in FY 2010. The average length of stay in DOC facilities for all Class D felony offenders is approximately ten months.

Background: The approval of registered architects or engineers is determined by the size and type of public works project under the 2006 International Building Code, which is adopted as law by administrative rule of the Fire Prevention and Building Safety Commission.

Explanation of State Revenues: *Class D Felony:* If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for a Class D felony is \$10,000. Criminal fines are deposited in the Common School Fund.

If the case is filed in a circuit, superior, or county court, 70% of the \$120 criminal costs fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), judicial insurance adjustment fee (\$1), and the DNA sample processing fee (\$1) are deposited into the state General Fund.

Explanation of Local Expenditures: *Local Units:* The bill would have the same indeterminate fiscal impact on local units for the same reasons seen above in Explanation of State Expenditures.

Class D Felony: If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Explanation of Local Revenues: *Class D Felony:* If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: The county general fund would receive 27% of the \$120 criminal costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of the criminal costs fee. In addition, several additional fees may be collected at the discretion of the judge and depending upon the particular type of criminal case.

State Agencies Affected: Department of Correction.

Local Agencies Affected: Trial courts, local law enforcement agencies.

Information Sources: Indiana Sheriffs' Association, Department of Correction.

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